

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4 LASERDYNAMICS, INC.,)(
5)(CIVIL DOCKET NO.
6)(2:06-CV-348-TJW-CE
7 VS.)(MARSHALL, TEXAS
8)(
9 ASUS COMPUTER)(JUNE 30, 2009
10 INTERNATIONAL, ET AL.)(8:03 A.M.
11 MOTIONS HEARING
12 BEFORE THE HONORABLE JUDGE CHAD EVERINGHAM
13 UNITED STATES MAGISTRATE JUDGE
14
15 APPEARANCES:
16 FOR THE PLAINTIFF: MR. TOM SANKEY
 MR. GREGORY M. LUCK
17 MR. WESLEY W. YUAN
 Duane Morris - Houston
18 3200 Southwest Freeway
 Suite 3159
19 Houston, Texas 77027
20 APPEARANCES CONTINUED ON NEXT PAGE:

21 COURT REPORTER/TRANSCRIBER: MS. SUSAN SIMMONS, CSR
Official Court Reporter
22 100 East Houston
Suite 125
23 Marshall, Texas 75670
903/935-3868

24
(Proceedings recorded by electronic recording equipment,
25 transcript produced on a CAT system.)

1 MR. JEFFREY S. POLLACK
Duane Morris LLP - PA
2 30 South 17th Street
Philadelphia, PA 19103

3
MR. DAYMON JEFFREY RAMBIN
4 Capshaw DeRieux, LLP
1127 Judson Road
5 Suite 220
Longview, Texas 75601-5157

6
FOR DEFENDANTS: MR. S. CHRISTIAN PLATT
7 Paul Hastings Janofsky & Walker
4747 Executive Drive
8 12th Floor
San Diego, CA 92121

9
MS. KATHERINE F. MURRAY
10 Paul Hastings Janofsky & Walker
515 S. Flower Street
11 25th Floor
Los Angeles, CA 90071-2228

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	I N D E X	
2		
3	June 30, 2009	
4		Page
5	Appearances	1
6	Court Reporter's Certificate	12
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

21

22

23

24

25

1 P R O C E E D I N G S

2 THE COURT: All right. We'll hear proffers
3 as to the authenticity of the two exhibits that -- with
4 respect to the hearing I set at 8:00 this morning.
5 What's the proffer?

6 MR. SANKEY: Your Honor, with respect to the
7 TSR reports, first of all, I think that they are
8 admissible under 803.17 in market reports that are
9 reasonably relied upon in the industry. My --

10 THE COURT: All right. Let's talk about the
11 authenticity. That's the objection. That's -- that's
12 the hearsay argument. What's the authenticity proffer?

13 MR. POLLACK: Your Honor, on the
14 authenticity, our position is that these documents come
15 from their own records, in fact are cited in their own
16 annual report. They're cited in their own expert's
17 report. Mr. Reed footnotes where he's relying upon them
18 to set a royalty rate. And Your Honor had ordered them
19 to take a deposition after the last hearing if they were
20 to challenge authenticity and they have not taken that

21 deposition.

22 THE COURT: Okay. Let's hear the objection.

23 MS. MURRAY: Your Honor, just to correct the

24 record, our expert does not rely on this document. This

25 document is a third-party document. It was produced by

1 our clients, but it is not created by our clients. Our
2 clients cannot authenticate anything that's contained in
3 this information.

4 THE COURT: Okay. Tell me what good faith
5 basis you have to suggest that the documents are not
6 what they purport to be or in any way are not authentic.

7 MS. MURRAY: Well, the problem, Your Honor,
8 is that we have no way to verify whether the information
9 is authentic, so we don't know where it --

10 THE COURT: So you don't -- you don't know
11 then necessarily whether it's unauthentic?

12 MS. MURRAY: We can't say yes or no either
13 way.

14 THE COURT: Okay. And what efforts have you
15 made to determine authenticity?

16 MS. MURRAY: Well, Your Honor,
17 unfortunately, because the company is in Tokyo, it's
18 been very difficult to get in touch with --

19 THE COURT: Okay.

20 MS. MURRAY: -- that particular company.

21 THE COURT: Okay. So tell me what -- tell

22 me what you've done.

23 MS. MURRAY: We haven't done anything to

24 verify whether it's authentic --

25 THE COURT: Tell me what you've done to

1 contact the company to -- you said it was difficult to
2 contact them. I want to know what all you've done.

3 MS. MURRAY: Following the -- the hearing we
4 had with the Court, we asked Plaintiffs -- we sent
5 Plaintiffs a letter to clarify whether they were going
6 to seek to introduce this exhibit and explained that if
7 they want to seek to introduce this exhibit, we believe
8 Plaintiffs should be taking the deposition to get the
9 documents authenticated. And we did not seek to
10 introduce this exhibit at trial.

11 THE COURT: Okay. And then before then I
12 need to know everything that you did to assess whether
13 they were authentic or not.

14 MS. MURRAY: We did not take any efforts to
15 assess either way, Your Honor.

16 THE COURT: Okay.

17 MS. MURRAY: We believe it was Plaintiff's
18 burden to do that.

19 THE COURT: Okay. Well, here's what I'm
20 going to do. I'm going to sustain the objection.

21 Is it something that your expert's going to

22 rely on?

23 MR. SANKEY: No, sir.

24 THE COURT: Under Rule 703, I'm going to

25 allow you to disclose it to the jury. As long as he

1 lays the predicate that experts in the field would
2 reasonably rely on this type of information, I'll allow
3 you to use it in conjunction with your expert's
4 testimony. I will allow him to disclose it to the jury,
5 but it's not going to be admitted. Those exhibits will
6 not be admitted as substantive evidence.

7 I find for purposes of the record that the
8 probative value of the exhibits in assisting the jury in
9 evaluating your expert's opinion substantially outweighs
10 their prejudicial effect. I find for the record that
11 the prejudicial effect is very low, given that there's
12 been no suggestion that the documents are not authentic
13 or not what they purport to be. They were found in the
14 Defendants' records and the Defendant made no effort at
15 all to assess whether or not one way or the other the
16 documents were authentic or not, so I find the
17 likelihood of prejudicial effect by allowing them to be
18 displayed to the jury is very low, and accordingly, that
19 will be the ruling of the Court as to those exhibits.

20 I'll see y'all at 8:30 during opening

21 statements to discuss your -- your bench brief issues.

22 I understood there was an issue with respect to

23 demonstratives. Y'all want to pass them up, I'll look

24 at them in chambers.

25 MR. SANKEY: I can -- I can -- we can get to

1 the Court our demonstratives. I've not -- I -- I
2 understand they have objections to them. I think we
3 have three or four of them we'll get to the Court.

4 They're up in the courtroom.

5 THE COURT: Okay.

6 MR. PLATT: If it helps, I can tell the
7 Court what our objections are with those demonstratives?

8 THE COURT: Okay.

9 MR. PLATT: So there are some handwritten
10 notes that appear to be on lined paper as if they came
11 from a notebook that sort of -- are meant to explain, I
12 guess, the conception of the invention. There's been no
13 documents produced corroborating that story, and we
14 think it's -- it's misleading to the jury when you're
15 going to put pictures -- hand drawn pictures up there
16 that look like they're taken from a notebook and display
17 those to the jury. And those are our objections.

18 MR. SANKEY: Your Honor, the demonstrative
19 -- it's three pages. It's a hand drawing done by Mr.
20 Kamatani recently explaining how he came up with the

21 initial idea for his invention while he was sitting in a
22 boat on a lake fishing with a fish finder and he drew
23 the boat and he drew the fish finder and how it shoots a
24 sound wave down to the bottom and comes back up and
25 that's the light bulb that went off for him to come up

1 with his invention to begin with. He -- he produced or
2 he drafted that for me after he had told me the story, I
3 asked him to please do that and he did it. We gave it
4 to them as a demonstrative to explain to the jury his
5 idea.

6 THE COURT: Well, as long as you explain to
7 the jury that that's the context in which it was
8 prepared, and not suggest that it was intended to
9 corroborate something that happened back when he
10 actually -- when the light went off, as you suggested,
11 I'll allow -- I'm going to allow it, but you --

12 MR. SANKEY: It was all done --

13 THE COURT: -- what I'm instructing you do
14 is -- is at the time you display it for the jury to
15 explain the context in which it was done.

16 MR. SANKEY: Yes, sir.

17 THE COURT: Okay? That ought to resolve the
18 objection. It's not admitted for substantive purposes,
19 but as long as the context in which it was prepared was
20 -- is made clear, then I don't have a problem with that.

21 Now, what other issues are there?

22 MR. PLATT: That was our main objection.

23 THE COURT: Are there any other objections

24 to exhibits that I need to take up?

25 MR. SANKEY: We have the same exact issue

1 with the TSR document we had with the One Source
2 document, and these are the -- this is the company that
3 converts Taiwanese dollars into U.S. dollars. Same
4 deal. Our expert relies upon it. It's accurate. We've
5 done the comp -- compilations and they come out to the
6 exact penny on it. I don't think there's any reasonable
7 basis to object to authenticity. No one took the One
8 Source company's deposition to try to prove that it was
9 unauthentic.

10 And, again, I think that -- I would assume
11 that we would have the same ruling, that the expert can
12 rely upon it. He can say he reasonably relies upon
13 doing a conversion since most of the numbers we received
14 from the Defendants are stated in Taiwanese dollars.

15 THE COURT: What -- is there a good faith
16 basis to challenge the authenticity of it?

17 MS. MURRAY: The pro -- the problem we had,
18 Your Honor, with this one is that it has the wrong name
19 of the company on it. It doesn't have the right name --
20 name for Quanta Storage.

21 MR. POLLACK: Your Honor, if I could speak
22 to that. The -- the name on the report shows up as
23 Quanta Storage when they did assess -- that's the only
24 difference, not Quanta Storage, Inc.
25 MS. MURRAY: This says Quanta Storage

1 International Limited, and this is the one that the
2 Court asked them to go take a deposition to get the
3 documents authenticated.

4 THE COURT: Well, I'm going to -- I think
5 that more -- that issues goes to the weight to be given
6 to experts' testimony and relying on it. I'm going to
7 issue the same ruling that I did before with the same
8 findings in there that neither side has raised any
9 question as to the authenticity, therefore the probative
10 value I think substantially outweighs any prejudicial
11 effect as long as your expert relies -- lays the
12 predicate that others in the field would reasonably rely
13 on this type of information.

14 And I believe that the challenge to the -- I
15 believe the challenge to the name of the company goes to
16 the weight to be given to the expert's testimony relying
17 on that document.

18 And I'll see y'all at 8:30.

19 MR. SANKEY: Thank you, Judge.

20 COURT SECURITY OFFICER: All rise.

21 * * * * *

22

23

24

25

1 CERTIFICATION

2

3 I HEREBY CERTIFY that the foregoing is a
4 true and correct transcript from the electronic
5 recording of the proceedings in the above-entitled
6 matter to the best of my ability.

7

8

9

SUSAN SIMMONS Date
10 Official Court Reporter
State of Texas No.: 267
11 Expiration Date: 12/31/10

12

13

14

15

16

17

18

19

20

21

22

23

24

25